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**INTERGOVERNMENTAL AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES  
BY AND BETWEEN  
HARFORD COUNTY, MARYLAND  
AND  
MARYLAND ENVIRONMENTAL SERVICE**

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**INTERGOVERNMENTAL AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES**

**BY AND BETWEEN**

**HARFORD COUNTY, MARYLAND**

**AND**

**MARYLAND ENVIRONMENTAL SERVICE**

**THIS INTERGOVERNMENTAL AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES** (this “Agreement”), made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Harford County, Maryland (“County”), a body politic and political subdivision of the State of Maryland, and the Maryland Environmental Service (“MES”), an agency and instrumentality of the State constituted as a body politic and corporate. County and MES shall sometimes hereinafter be referred to collectively as the “Parties”.

**RECITALS**

The County, through its Department of Public Works, Division of Environmental Services, currently operates environmental, solid waste management and recycling programs at the Harford Waste Disposal Center, 3135 Scarboro Road, Street, Maryland 21154 as well as a groundwater treatment system for the closed cells of the facility (“HWDC”); and operates the Tollgate yard trim site located at 703 North Tollgate Road, Bel Air, Maryland 21014 as well as a groundwater treatment system and gas flare for the closed Tollgate Landfill (“Tollgate”); and operates a gas flare at the closed Bush Valley Landfill (“Bush Valley”). These active facilities and active portions of otherwise closed facilities shall be referred to herein collectively as “the Facilities”. In addition, the County provides post-closure operations and monitoring services at

the following closed landfills: Scarboro Landfill (i.e., closed cells at HWDC, excluding the groundwater treatment system), Tollgate (excluding the gas flare and groundwater treatment system), Bush Valley (except gas flare), Spencer's, Madonna, Abingdon, Mullins and Perryman. The closed landfills shall sometimes be collectively referred to herein as "the Legacy Sites". The County currently directs solid waste haulers to deliver the majority of solid waste generated in the County to the Harford Waste-to-Energy Facility ("HWTEF"); however, that facility is scheduled to cease operations in March 2016. Once the HWTEF closes, haulers collecting residential and commercial solid waste will be directed to deliver solid waste and recyclables to the Eastern Sanitary Landfill ("ESL") which is owned and operated by Baltimore County, Maryland.

The County wishes, and MES has agreed, that in the interest of achieving efficiencies and savings for the County, MES will provide, under contract to the County, the majority of functions currently provided by the Division of Environmental Services including normal, routine operation and maintenance of the Facilities and monitoring of the Legacy Sites but excluding certain regulatory and enforcement functions delineated herein. Any capital expenses or major work or improvements required and agreed to by the Parties, either for the Facilities or the Legacy Sites, shall be the subject of separate individual agreements and are not intended to be included in the scope of work envisioned by the present Agreement.

MES will establish within its own funds and accounts a Project (as defined in Schedule A) for transactions related to the Facilities, and will maintain discrete accounting records of all transactions relating thereto.

It is anticipated that MES, in accordance with Applicable Law, will collect fees from users, at rates and amounts legislatively established in the Harford County Code.

MES and the County wish to memorialize in this Agreement the terms under which MES will be obligated to provide these services and the County will be obligated to pay for the services and cooperate with MES.

Now therefore, in consideration of the foregoing premises, which are incorporated herein, and of the mutual obligations undertaken herein, the Parties hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND RULES OF INTERPRETATION**

**Section 1.1 Definitions.** Capitalized terms used herein shall have the meanings given to such terms in this Agreement and/or in Schedule A hereof.

**Section 1.2 Rules of Interpretation.** For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

a. All references in this instrument to designated "Articles," "sections" and other subdivisions are to the designated Articles, sections and other subdivisions of this instrument.

b. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

c. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders.

d. Schedules A-D are attached and hereby incorporated and made a part of this Agreement.

e. The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

f. References to agreements or contracts include all amendments, modifications and supplements thereto executed prior to final execution of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and, except as expressly provided otherwise herein, nothing in this Agreement is intended to confer on any Person other than the Parties and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

h. Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

## ARTICLE II

### PROVISION OF CONTRACT SERVICES

#### Section 2.1 General.

a. In addition to the specific requirements set by law or contained herein, and except as otherwise provided in this Agreement, MES shall, in accordance with their proposal dated

June 1, 2015, perform Routine Operation, Monitoring and Maintenance to meet the requirements placed upon the County by, and to provide the services described in, the following documents, which are incorporated into this Agreement by reference as if set forth in full:

- (1) Harford County 2015-2024 Solid Waste Management Plan
- (2) Comprehensive Operation and Maintenance Plan dated February 2011
- (3) Refuse Disposal Permit 2010-WMF-0098
- (4) Refuse Disposal Permit 2012-WMF-0570
- (5) Industrial Wastewater Discharge Permit C-H-002
- (6) MDE Air Permit for Operating Landfill 24-025-0360
- (7) US EPA Title V Air Permit
- (8) Oil Operations Permit 2012-OPT-2799
- (9) HWDC Spill Prevention, Control and Countermeasure Plan dated June 4, 2012
- (10) HWDC Stormwater Pollution Prevention Plan dated June 2014
- (11) Grading Permits:
  - HWDC: No. 14-59802-001 dated March 20, 2014 (Cell N2 construction and closure of Cells A-J)
  - No. 15-59599-001 dated March 26, 2015 (site operations)
  - Tollgate: No. 14-59788-001 dated August 2014
  - Spencer's: No. 14-59808-001 dated October 10, 2014
- (12) NPDES Permits:
  - HWDC: No. MD0067890, dated August 1, 2015
  - Tollgate: No. MD0065765 dated March 1, 2012
- (13) NOIs:
  - HWDC: No. MDRCM01V0, pending (construction)

No. MDR00028 dated September 2, 2014 (industrial activity)

Spencer's: No. MDRCM01R5 dated June 8, 2015

- (14) Scrap Tire Hauling Permit No. 2014-RTH-09312 dated January 23, 2014
- (15) Tire Acceptance Facility Permit No. 2014-RSC-00153 dated January 23, 2014
- (16) Scarboro Landfill Administrative Consent Order dated December 14, 1994
- (17) Industrial Discharge Permit 00-DP-3234 (NPDES MD0067890)
- (18) Groundwater Appropriation Permit HA1996G045(07)
- (19) HWDC Surface Water Appropriation Permit HA1995S048(02)
- (20) HWDC Environmental Monitoring Plan dated November 29, 2012
- (21) Tollgate Landfill Complaint and Order C-O-84-459
- (22) Tollgate Groundwater and Surface Water Monitoring Plan dated June 2012
- (23) Tollgate Landfill Gas Monitoring Plan dated December 8, 2011
- (24) Tollgate Groundwater Appropriation Permit HA1996G034(02)
- (25) Tollgate Industrial Discharge Permit 11-DP-2887 (NPDES MD0065765)
- (26) Tollgate Storm Water Pollution Prevention Plan dated August 2007
- (27) Spencer's Consent Agreement CO-11-SW-023
- (28) Spencer's Groundwater and Surface Water Monitoring Plan dated November 22, 2013
- (29) Spencer's Gas Monitoring Plan dated May 13, 2008
- (30) Spencer's Draft Landfill Closure Plan dated November 2013
- (31) Bush Valley Consent Order EPA Docket III-96-13-DC
- (32) Solid Waste Management Rules and Regulations effective December 2, 2013
- (33) Harford County Debris Management Plan

- (34) Municipal Solid Waste Disposal Agreement dated August 28, 2013 between Baltimore County, Maryland and Harford County, Maryland
- (35) Municipal Solid Waste Disposal Agreement dated August 2008 between Baltimore County, Maryland and Harford County, Maryland
- (36) Municipal Solid Waste Agreement with Town of Bel Air dated February 24, 1969
- (37) Bush Valley Landfill Superfund Site Remedial Action Report dated June 1, 2015

b. The requirements set by applicable Federal, State or local law, code, rules or regulation, the documents listed above as Sections 2.1a(1) through (37), any other obligations imposed upon MES by this Agreement and Prudent Solid Waste Management Practices shall be collectively referred to as the "Performance Standards".

c. Beginning on the Commencement Date, MES shall provide all labor, materials and, except as provided herein, vehicles and equipment required to operate and maintain the Facilities and to perform Routine Operation, Monitoring and Maintenance required to meet the Performance Standards. Any costs and expenses that go beyond Routine Operation, Monitoring and Maintenance required to meet Performance Standards including major repairs, as agreed by the Parties, and capital improvements, as defined in the capital budget, shall be funded by the County.

d. MES shall provide all information and perform all acts, including the timely payment of Project Revenues and the implementation of procedures and inspections, necessary to allow the County to fulfil its obligations under the WTE Contract (other than the County's obligations to pay the Northeast Waste Disposal Authority) and Article 2, Section 4.1 and Section 5.3 of the 2013 Baltimore County Contract, which are incorporated herein.

e. At least seven (7) days prior to the Commencement Date, MES shall provide to the County the resumes of the Senior Operations Manager, the Deputy Chief of Operations, the

Chief Project Manager and any Supervisor proposed to provide services under this Agreement. The County shall have the right to reject any MES employee who does not, in the reasonable judgment of the Director, have adequate experience or qualifications to adequately perform his or her job duties and MES shall replace that employee promptly. MES shall also provide to the County copies of any and all licenses held by its proposed staff and required in order to operate the Facilities or any part thereof.

f. All acceptable materials delivered to the Facilities, including Waste delivered in a County vehicle, shall be accepted, managed and processed by MES in accordance with the Performance Standards.

**Section 2.2 General Plan for Operations.** Until the WTE Termination Date, solid waste collected by Designated Haulers shall be delivered to either the HWTEF or HWDC, at the direction of MES as determined through coordination with the HWTEF. Recyclables collected by Designated Haulers shall be delivered to the HWDC and loaded onto trailers for transport to Baltimore County or as otherwise directed by the County. After the WTE Termination Date, MES shall: (1) direct Designated Haulers to deliver Waste and Recyclables to the ESL; (2) landfill all, or a portion of Waste delivered to the HODO and HWDC; and (3) transport to the ESL all Recyclables delivered to the HWDC and any Waste that is not landfilled at HWDC.

**Section 2.3 Facility Operating Hours.** The normal hours of operation of the Facilities, excluding holidays listed in Section C.18, shall be as follows:

HWDC: Monday through Saturday, 7am – 3pm

HWTEF Scalehouse: Monday through Friday, 7am – 5pm  
(until WTE Termination Date)

Tollgate: Saturday, 7am – 3pm

Administrative Office: Monday through Friday, 7am – 3:30pm

Any deviation from the schedule given above may occur only with the express written approval of the Director. MES shall provide reasonable additional operating hours after County holidays, winter weather closures and holidays that create three-day weekends.

**Section 2.4 Estimated Quantities of Waste/Recyclables and Vehicle Traffic.** The following are estimates of the quantity of materials that will be delivered to the Facilities during FY16:

- a. Solid Waste
  - (1) HWDC - Expected Weekly Tonnage, Monday through Saturday through WTE Termination Date is 1,400 tons (daily range 110-400 tons)
  - (2) HWDC - Expected Weekly Tonnage, Monday through Saturday after WTE Termination Date is 173 tons (HODO trash only)
  - (3) HWTEF - Expected Weekly Tonnage, Monday through Friday through WTE Termination Date is 2,400 tons (daily range 350-650 tons)
- b. Recyclables
  - (1) HODO – 150 to 300 cubic yards per day
  - (2) HWDC – 18,000 tons per year
- c. Mulch and Compost – approximately 40,000 tons per year
- d. Vehicle traffic at HODO
  - (1) Weekday customers: 100-200 vehicles
  - (2) Weekend customers: 400-600 vehicles
- e. Vehicle traffic at Tollgate: up to 2,000 vehicles on Saturdays in April, May, October, November.

**Section 2.5 Independent Contractor.** MES shall perform all work required herein as an independent contractor to the County. MES shall be responsible for determining the means and methods of achieving compliance with the Performance Standards. MES shall perform all work tasks, achieve all milestones and meet all measures of quality or quantity set by the Performance Standards but shall adopt its own staffing levels and/or methods in doing so. Any portions of the Performance Standards describing specific procedures for achieving compliance or accomplishing a particular task are not deemed to be terms of this Agreement but are merely a reflection of how the work was performed by the County prior to the Commencement Date.

**Section 2.6 Noxious Weed and Gypsy Moth Control Programs.** MES shall manage and implement the County's noxious weed control program under agreement with the Maryland Department of Agriculture. MES shall provide an employee with appropriate State licensing to act as the County coordinator of the program. The coordinator shall respond to inquiries from residents and State agencies, spray for noxious weeds under the supervision of a State employee and perform follow-up inspections. MES shall also coordinate the gypsy moth control program implemented by the State of Maryland for spraying that occurs in the County.

### **ARTICLE III**

#### **SOLID WASTE MANAGEMENT SERVICES**

**Section 3.1 Delivery of Waste and Recyclables by Haulers.**

a. Designated Haulers. Deliveries of commercial and residential Waste and Recyclables to the HWDC and/or the HWTEF shall primarily be made by Designated Haulers. The County shall, upon execution of this Agreement, compile and provide MES with the following information about all commercial haulers licensed by the County to deliver Waste and Recyclables to the HWDC and HWTEF: name and address; identification number; and any

other information reasonably requested by MES. Unless otherwise expressly permitted hereunder, and with the exception of Approved Baltimore County Waste, MES shall only accept Waste and Recyclables generated within the County. Upon expiration or termination of a solid waste hauler's license, MES shall remove that hauler from the list of Designated Haulers.

b. Delivery Schedules and Procedures. MES shall be responsible for developing and implementing the weekly and daily disposal schedule for commercial haulers in coordination with the operator of the Harford Waste-to-Energy Facility and to provide notice to Designated Haulers of delivery instructions. MES shall also provide notice to all Designated Haulers of the WTE Termination Date and instructions for deliveries to ESL.

c. Measurement and Acceptance of Waste and Recyclables.

(1) Scale Operation.

(a) HWDC: MES shall operate and maintain road vehicle scales at the HWDC to record transactions and to provide data to the County after the Commencement Date. MES shall weigh and complete a weight record for each road vehicle delivering Waste or Recyclables to the HWDC which is required by Section 157-28C of the County Code to be weighed.

(b) HWTEF: Until the WTE Termination Date, MES shall operate the road vehicle scales at the HWTEF to record transactions and to provide data to the County after the Commencement Date. MES shall weigh and complete a weight record for each road vehicle delivering Waste to the HWTEF which is required by the County Code Section 157-28C to be weighed.

(2) Hauler Identification. Only trucks from Designated Haulers bearing a placard with identification number shall be allowed to dispose of Waste at the HWDC or the HWTEF.

(3) Scale Outages. If the permanent road vehicle scales at the HWDC or the HWTEF are not working properly or are being tested, this will constitute a “scale outage”, during which time the solid waste disposal fees contained in Section 157-28C of the Harford County Code shall be charged. MES will use its reasonable best efforts to eliminate the cause of the scale outage within twenty-four (24) hours.

(4) Testing of Scales. MES shall inspect and test the road vehicle scales as required by Applicable Law but not less frequently than once per year.

(5) Incorrect Scales. If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

**Section 3.2 Delivery and Acceptance of Solid Waste and Recyclables from Private County Residents.**

a. MES shall maintain the HODO at HWDC for delivery of Waste and Recyclables by private County residents. MES shall provide traffic control and shall staff the area adequately, particularly on Saturdays, to assure a smooth and efficient flow of vehicles through the HODO.

b. MES shall require private individuals to provide proof of County residency before allowing such persons to deposit Waste and Recyclables at the HODO.

c. At least five (5) 50 cubic yard roll-offs shall be maintained at all times at the HODO. Once a roll-off has been filled, it shall be replaced with an empty one and the filled roll-off shall be removed for disposal.

d. MES shall provide areas at the HODO for segregation of recyclable materials in accordance with Section 4.3a of this Agreement.

e. MES shall provide reasonable assistance to private individuals in unloading vehicles and shall monitor loads to ensure that Unacceptable Materials are rejected.

### **Section 3.3 Provision of Service by MES.**

a. Service Covenant. After the Commencement Date, MES shall accept and dispose of Waste that is generated in the County and delivered to the Facilities. Estimated quantities are provided in Section 2.4. Except as otherwise provided in this Agreement, MES shall manage and perform Routine Operation, Monitoring and Maintenance necessary to fulfill its obligations under the Performance Standards.

b. MES Refusal Rights. MES may reject deliveries of (1) Unacceptable Material, (2) Waste that is delivered in violation of the Refuse Disposal Permit or Harford County Rules and Regulations, and (3) Waste delivered outside of normal Receiving Hours.

c. County Waste and Recyclables. MES shall accept Waste and Recyclables only from (1) Designated Haulers, (2) residents of the County, (3) vehicles owned and operated by the County, or (4) other vehicles approved in writing by the County Representative.

### **Section 3.4 Waste and Recyclables Delivered to the Facilities.**

a. Inspection and Segregation of Recyclables. MES shall inspect the contents of vehicles delivering Waste under this Agreement to the Facilities as necessary to ensure that the materials conform to the Performance Standards. MES will institute reasonable procedures,

including inspection procedures, to ensure that loads with segregated recyclables are handled properly. Any loads containing mixed waste and recyclables will be treated entirely as waste. If a load clearly has 50% or more of recyclables mixed with waste, MES will provide a written report of the load and identify the hauler to the Director. MES shall provide written notice to the hauler.

b. Inspection for Unacceptable Materials at the Facilities. MES will institute appropriate procedures, including inspection procedures, to minimize the receipt of Unacceptable Materials at the Facilities. In the event that Unacceptable Materials are delivered to the Facilities, MES shall separate the Unacceptable Material from the Waste or yard trim and will, if possible, contact the party responsible for delivery of the Unacceptable Material and arrange for its prompt removal. MES will document the time, the source of delivery and identity of the hauling firm and truck number. In the event that Unacceptable Material is received and the responsible hauler is unknown, MES shall handle and dispose of Unacceptable Material in accordance with the Performance Standards.

c. Inspection for Unacceptable Materials After WTE Termination Date. In the event that MES has knowledge or becomes aware that a Designated Hauler's delivery of Unacceptable Waste is excessive, MES shall notify the Director and shall cooperate with the County to notify the Designated Hauler so that corrective action may be taken. When directed by the County Representative, MES shall contact a Designated Hauler to arrange for the Designated Hauler to retrieve a load it delivered to ESL which contained Unacceptable Material.

d. Hazardous Waste. MES shall not knowingly permit the delivery of Hazardous Waste to the Facilities. MES shall enforce all Applicable Laws and establish administrative procedures prohibiting the delivery of Hazardous Waste. MES shall, in accordance with this

Agreement, remove and dispose of, or cause the removal and disposal of, all Waste received at the Facilities which consists of or cannot be reasonably separated from Hazardous Waste. Any segregated Household Hazardous Wastes shall be temporarily stored, handled and removed from the Facilities in accordance with Applicable Law by MES. In addition, MES shall advertise and conduct at least one Household Hazardous Waste collection day in accordance with Section 4.3c.

e. Debris Management. In the event of a public emergency such as a tornado or hurricane, MES shall oversee and undertake debris management efforts. MES shall coordinate with the County Representative to implement that portion of the Harford County Debris Management Plan as applicable in such an event.

f. Scalehouse and Weighmaster Staff. MES shall:

(1) Provide adequate bonded and insured staff to accept cash payments and document transactions for private vehicles and commercial haulers for:

- (a) the HWDC;
- (b) the HODO;
- (c) the HWDC mulch and compost operation; and
- (d) the HWTEF.

(2) Deposit all collected cash daily in a bank account or other secure facility.

(3) Until the WTE Termination Date, provide scale house staff at both the HWTEF and HWDC.

(4) Document all loads and check loads for Unacceptable Materials.

(5) Develop and track a weekly disposal schedule for commercial haulers and make daily adjustments as necessary.

(6) Develop reports for the Director, the HWTEF and the County Department of Treasury, for which data is available.

(7) Document quantities of materials delivered to and processed at the HWDC and the HWTEF daily.

(8) Document the volume and type of materials disposed of off-site.

(9) After the WTE Termination Date, coordinate with Baltimore County to obtain data and reports as necessary.

(10) Maintain security video monitoring of the daily cash transactions and receipts.

(11) In the event of unauthorized access or breach of confidential personal information, MES or its agent shall be responsible for sending all notifications to all individuals whose personal information may have been disclosed and for all other requirements of Title 10, Subtitle 13, of the State Government Article of the Annotated Code of Maryland.

### **Section 3.5 Record Keeping.**

a. MES shall maintain all records necessary to substantiate Project Costs, to fulfill the County's reporting requirements in accordance with the Performance Standards, to allow the County to fulfil its obligations under the provisions of Article 2, Section 4.1 and Section 5.3 of the 2013 Baltimore County Contract, the WTE Contract (with regard to quantities of waste disposed of), and to accurately bill Designated Haulers.

b. MES shall maintain records necessary to track quantities of solid waste delivered by Baltimore County under the Municipal Solid Waste Disposal Agreement of 2008 and shall notify the County when its obligation to accept solid waste from Baltimore County under that agreement has been met.

c. MES shall, if necessary, perform annual topographic mapping of the HWDC using aerial photography in order to estimate used and available capacity in the landfill cells.

d. Tracking of Waste Quantities. MES shall:

(1) Prior to the WTE Termination Date, keep accurate records reflecting the amount of Waste disposed of by each Designated Hauler at the HWDC and HWTEF.

(2) After the WTE Termination Date, the County and MES will cooperate to ensure that the data is obtained from Baltimore County documenting the quantities of Waste disposed of by Designated Haulers at ESL. MES shall work with Baltimore County to resolve any discrepancies between MES records of Waste delivered to ESL and Baltimore County's invoice for the Waste delivered..

### **Section 3.6 Transportation and Disposal Services.**

a. MES shall arrange for transportation and disposal, in accordance with the Performance Standards, of all Unacceptable Material and Hazardous Waste delivered to the Facilities.

b. After the WTE Termination Date, if MES has knowledge or becomes aware that a Designated Hauler's delivery of Unacceptable Waste is excessive, MES shall notify the Director and shall cooperate with the County to notify the Designated Hauler so that corrective action may be taken.

c. MES shall arrange for transportation of leachate to the Sod Run Wastewater Treatment Plant and shall arrange for transportation of mattresses to the Cockeysville Transfer Station or to such sites as otherwise agreed to by the Parties.

**ARTICLE IV**  
**RECYCLING SERVICES**

**Section 4.1 General.**

a. MES shall provide all labor, materials and, except as provided herein, equipment required to operate and maintain the County Recycling program in accordance with the Performance Standards.

b. MES shall maintain records and prepare all reports required, on behalf of the County, in order to fulfill the State's recycling reporting requirements and any additional requirements described herein.

**Section 4.2 Recycling Transfer Station.** MES shall until WTE Termination Date:

a. Operate and maintain the recycling transfer station (RTS) at the HWDC.

b. Accept and process all Recyclables delivered by Designated Haulers, County vehicles and private citizens.

c. Check all loads for Unacceptable Materials.

d. Haul single stream recyclables from the HODO to the RTS and load all Recyclables into Baltimore County trailers. Coordinate with Baltimore County to ensure adequate trailers are available. After the WTE Termination Date, MES shall haul single stream recyclables to ESL or other sites as directed by the County.

e. Track quantities of Recyclables collected in the County and prepare an annual report for approval by the County and submittal to MDE.

**Section 4.3 Recycling Services.** MES shall:

a. Maintain HODO for disposal of, and administer the contracts for collection and removal of, the following items:

- (1) Mattresses
- (2) Scrap tires
- (3) Single stream recycling
- (4) Electronic waste
- (5) White goods
- (6) Stale gasoline/oil mixture
- (7) Wet cell batteries
- (8) Yard trim
- (9) Used cooking oil
- (10) Textiles
- (11) Propane bottles
- (12) Fluorescent lights
- (13) Asbestos
- (14) Latex paint
- (15) Agricultural wrap and feed bags
- (16) Farmers' tires

b. Coordinate with contractors to schedule pick-up of Items a(4) through a(16), above.

c. Conduct annual residential HHW collection days at the HWDC. Dispose of collected HHW in accordance with the terms of Contract Number 11-177, dated April 9, 2004, between the County and MES.

d. Monitor mandated recycling at apartments/condominiums The County will provide the necessary information for MES to maintain and update a list of all apartments and

condominiums which contain ten (10) or more dwelling units. MES shall also conduct compliance inspections in accordance with the Solid Waste Management Plan, Section 1.15.1.E.

e. Monitor mandatory event recycling, including conducting compliance inspections.

f. Promote recycling in Harford County government facilities.

g. Maximize source reduction credits allowed under the Maryland Recycling Act.

h. Operate and maintain the eight (8) residential used motor oil and anti-freeze collection sites currently operated under the Intergovernmental Agreement Between Maryland Environmental Services and Harford County Regarding Used Oil and Anti-Freeze Collection Facilities dated June 14, 2012 in accordance with the terms of that agreement. MES shall assume all responsibilities of the County under said agreement. In accordance with the June 14, 2012 Intergovernmental Agreement, revenue from the sale of used oil shall not be considered Project Revenue under this Agreement.

i. Document the quantities of materials collected and monitoring activities undertaken under this Section 4.3.

**Section 4.4 Mulch and Composting.** MES shall:

a. Provide all labor, materials and, except as provided herein, vehicles and equipment required to maintain and operate the Tollgate yard trim site and the 11-acre mulch and composting facility at the HWDC, including accepting yard trim, inspecting loads for Unacceptable Materials, processing the yard trim to expeditiously produce mulch and compost of marketable quality, and maintaining a safe and tidy work area.

b. Test samples and check parameters such as temperature, pH, oxygen and moisture content during the production process as necessary to ensure quality, make operational decisions and meet State protocols.

c. Oversee and administer distribution and sales of compost and mulch in accordance with the Solid Waste Management Plan and the Code, including loading customer vehicles.

d. Maintain records to document the quantities of yard trim processed and the quantities of mulch and compost produced, distributed and sold.

e. Comply with Applicable Law related to composting.

**Section 4.5 Education.**

a. MES shall maintain the Office of Recycling Facebook page and the website, Harfordrecycles.org.

b. MES shall provide a recycling presentation to Fourth Grade science classes in the County in coordination with the Harford County Public Schools (“HCPS”). MES shall also provide presentations, lessons and activities, teacher training and materials, and shall participate in special recycling events in conjunction with the HCPS.

c. MES shall conduct tours of the HWDC for interested community groups and schools and shall participate in local special events, expos, fairs and business events to promote recycling.

d. MES shall administer the Business Recycling Awards program and shall assist businesses in identifying and promoting recycling opportunities.

e. Coordinate with the Harford County Master Gardeners and present composting workshops.

f. Coordinate a recycling advertising program and develop graphics for placement in print media to promote recycling in the County.

**Section 4.6 Transportation Services. MES shall:**

- a. Transport all Recyclables collected at the HODO to the RTS. Until the WTE Termination Date, MES shall load all such Recyclables into trailers provided by Baltimore County. Beginning on the WTE Termination Date, MES shall arrange for transportation of all Recyclables deposited at the HWDC to the ESL or other sites as directed by the County.
- b. Arrange for pick-up of the road sign bin maintained at Annie's Playground when full, empty the bin, segregate the signs and sign posts for recycling, and return the empty bin.
- c. Coordinate the placing and pick-up of bins for the farmer tire program.
- d. Coordinate with First Vehicle Services to retrieve, empty and return its scrap metal bin.
- e. Haul mattresses to the Cockeysville Transfer Station, or dispose of as agreed by the Parties.
- f. Coordinate with HWTEF and haul tires to the HWTEF until the WTE Termination Date. After the WTE Termination Date, MES shall explore options for disposing of tires and shall select the option most favorable to the County. MES shall provide documentation to the County of the available options and a recommendation for the County's approval.
- g. Haul material from Tollgate to the HWDC.
- h. Haul screenings from the mulch and compost operation to the HWTEF until the WTE Termination Date and, after that date, to the ESL.

## **ARTICLE V**

### **ENGINEERING SERVICES**

#### **Section 5.1 General.** MES shall:

- a. Provide engineering services required in order to plan for future solid waste facilities and to safely and efficiently operate the Facilities and monitor Legacy Sites in

accordance with the Performance Standards. Any major work, as agreed to by the Parties, is outside the scope of this Agreement and shall be funded by the County.

b. Provide engineering and technical support to solid waste operations, including but not limited to topographic surveys and stakeout of grades, drainage facilities and new roads.

c. Provide technical support for leachate tank level remote monitoring and alarm systems.

d. Coordinate and implement sediment and erosion control practices.

e. Oversee and implement stormwater management for the Facilities, including sampling and analysis of discharge and data collection as required to meet applicable permit requirements.

f. Conduct sampling and analysis of leachate for submission to the County Department of Public Works, Division of Water and Sewer.

g. Conduct bi-annual groundwater sampling and analysis for Scarboro, Tollgate and Bush Valley Landfills.

h. Conduct annual groundwater sampling at the Abingdon, Perryman and Madonna landfills.

i. Perform all necessary sampling, analysis and data gathering and prepare, for County review and submission: Industrial Discharge Permit applications; annual chemical information list for MDE; bi-annual hazardous waste report on behalf of all County departments for MDE using data provided by the County; Title V permit application and Title V permit reports, including annual greenhouse gas report for the EPA; semi-annual compliance certification report; annual compliance certification for HWDC emission sources prepared for

EPA and MDE; Non Methane Organic Compound Rate Report; annual toxic emissions screening report for MDE; annual emissions certification report; and report of billable toxic air pollutants.

j. Collect data, prepare reports and conduct routine monitoring and reporting necessary to ensure compliance with the Industrial Discharge Permit for Tollgate groundwater treatment system, Industrial Discharge Permit for Scarboro groundwater treatment system, HWDC Surface Water Appropriation Permit, Tollgate Groundwater Appropriation Permit and Scarboro Groundwater Appropriation Permit. Any major corrective action, repair or improvement required to maintain compliance which will involve capital expenditure and which is agreed to by the Parties shall be funded by the County.

k. Monitoring and oversight, as necessary, related to the Bush Valley Landfill Consent Order and the administrative consent order for groundwater quality at the former Scarboro Landfill.

l. Provide engineering services including, as necessary, studies, design, preparation of bid documents, construction management and project close-out for the following projects:

- (1) Completion of landfill cell N2 at the HWDC
- (2) Scarboro Landfill capping
- (3) Tollgate landfill gas system modifications
- (4) Capping of Spencer's landfill
- (5) New HODO Attendant Booth
- (6) HWDC Mulch and Compost Facility Improvements
- (7) Scarboro Groundwater Treatment Plant Modifications
- (8) Hickory II Leachate Discharge Facility Modifications

m. MES shall provide post-closure monitoring and oversight for the following Legacy Sites: Scarboro Landfill (except the groundwater treatment system); Tollgate (except the yard trim site, groundwater treatment system and gas flare); Bush Valley (except the gas flare); Spencer's; Madonna; Abingdon; Mullins; and Perryman. For purposes of gaining access to these landfills, MES shall be considered a contractor of the County.

n. Maintenance and operation (including on-call response), on a 24 hour per day/7 day per week basis, of landfill flares and gas systems at Scarboro Landfill, Tollgate and Bush Valley.

o. Maintenance and operation (including on-call response), on a 24 hour per day/7 day per week basis, of the groundwater pumping and treatment at the Scarboro and Tollgate landfills. MES shall provide full-time remote supervision by a State of Maryland licensed Class 7 Industrial Wastewater Treatment Plant operator.

## ARTICLE VI

### LITTER CONTROL

**Section 6.1 HWDC Litter Control.** MES shall pick up blown litter at the HWDC on a daily basis, including picking up litter along public roads in and around communities near the HWDC that are used by HWDC customers.

**Section 6.2 Off-site Litter Control and Solid Waste Enforcement.**

a. In response to specific complaints forwarded to MES by the County, MES shall pick up solid waste dumped along County roads and shall periodically patrol roads that are known solid waste dump-sites within the County.

b. In response to complaints regarding solid waste deposited on private property in violation of the Chapter 109 of the Harford County Code, MES shall investigate the complaint

by visiting the site of the alleged violation and, if solid waste is observed, by taking sufficient pictures to document the extent and type of solid waste on the property. MES shall provide the documentation to the Director in accordance with the time frames described in Section 7.2 herein.

c. In the event that the County elects to proceed with enforcement action against a private property owner for violation of Chapter 109 of the Harford County Code, MES shall, if necessary, provide the staff member who investigated the complaint thereof as a witness at any administrative or legal proceeding. MES shall also provide manpower to abate such a violation, if the Director so elects, and shall accurately and completely document the cost of such abatement and shall certify that cost to the Director.

d. MES shall administer the County Adopt-a-Road Program whereby individuals or groups adopt a portion of a roadway and agree to collect roadside litter at a specified frequency. MES shall provide supplies and materials for participants, shall coordinate picking up litter that is collected and shall document the amount of litter collected under the program. Signs for the Adopt-a-Road program will be supplied by the County.

**Section 6.3 Community Service.** MES shall coordinate with the Court system to accommodate residents convicted of petty crimes, misdemeanors or minor drug charges, or residents participating in absent parent programs, who wish to or are required to perform community service, including scheduling and holding interviews with applicants, providing safety training to participants and providing personal protective equipment, and shall verify that the participants performed their community service requirements. MES shall report to the Courts each applicant who has fulfilled his or her community service hours.

## ARTICLE VII

### LICENSING AND REGULATORY ENFORCEMENT

#### Section 7.1 Solid Waste Licensing.

a. Licensing of Haulers. MES shall, as the representative of the County and in accordance with the provisions of Harford County Code Section 109-2 relating to solid waste haulers:

(1) accept, review and process applications for annual solid waste hauler licenses;

(2) visually inspect each vehicle listed on any hauler's license application, including testing to confirm that bodies are leakproof;

(3) forward each completed license application and inspection reports for all vehicles listed on the application to the Director for the Director's review and approval;

(4) upon receiving the Director's approval of an application, issue a license to the applicant and install a placard number on each approved vehicle;

(5) mail application forms for the above-required license annually to each active licensee prior to February 15;

(6) collect license fees as set by law;

(7) verify that the performance bond prescribed in Harford County Code §109-2.F has been delivered to the County prior to issuance of a license;

(8) maintain the list of Designated Haulers; and

(9) in the event a Designated Hauler becomes more than sixty (60) days in arrears for payment of tipping fees, notify the Director and, at the County Representative's direction, remove that Designated Hauler from the list and suspend the Designated Hauler's right

to deliver Waste at the Facilities and/or, after the WTE Termination Date, right to deliver Waste to ESL until past due tipping fees are paid.

**Section 7.2 Investigation of Complaints.** MES shall:

- a. Accept and investigate all complaints regarding violations of the following: Harford County Code §109-2, §109-3, §109-7.1, §109-7.2, §109-7.3, §109-8.3, §109-19, §109-20, §109-22 and §109-24; and Harford County Solid Waste Management Rules and Regulations.
- b. Provide notice to the County of any complaint received from a party other than the County within one (1) Business Day of receipt.
- c. Commence the investigation of a complaint within five (5) Business Days of receipt thereof.
- d. Provide the results of each investigation, including any and all documentation gathered or generated, to the Director.
- e. Be provided a copy of any NOV and Order issued by the Director under Harford County Code §109-16A(3) as a result of an investigation conducted by MES.
- f. Should any person fail to abate any condition that is prohibited under Article I of Harford County Code, Chapter 109, or any rule, regulation, order or permit adopted or issued under Article I of Harford County Code, Chapter 109, at the direction of the Director, abate the condition and report the cost thereof and the name of the owner of the property on which the violation occurred to the County Treasurer.
- g. In the event a person against whom a NOV and Order has been issued requests a hearing, or if the County elects to seek criminal prosecution or injunctive relief against such person, or if the person against whose property a lien has been placed following an abatement action requests a hearing, or if the County seeks an injunction under Harford County Code §109-

16D, make available the staff member who conducted the investigation to act as the County's witness.

**Section 7.3 Complaints Against MES.** MES shall, within seven (7) days after receipt, forward a copy of any complaint received from a third party against MES or any of its employees to the County along with an explanation of any and all steps taken except for personnel actions by MES to investigate and resolve the complaint. MES shall cooperate fully with the County to investigate and resolve any complaint received by the County against MES or one of its employees, a copy of which shall be provided by the County within three (3) Business Days of its receipt.

## **ARTICLE VIII**

### **OPERATION OF THE FACILITIES – GENERAL**

**Section 8.1 Operation and Maintenance.**

a. Following the Commencement Date, MES shall, in a reasonably cost-effective manner, operate and maintain the Facilities and Legacy Sites in accordance with the Performance Standards and Schedule C. MES and the County acknowledge that a substantial objective of the County is to secure solid waste disposal services and recyclable receiving and transportation for the County in an environmentally sound manner. MES agrees that it shall keep the Facilities clean and in good condition and in compliance with environmental and other Applicable Law and, should any nuisance condition or violation of Applicable Law occur, to expeditiously remedy the condition or violation. MES shall, at its cost, be responsible for any bodily injury or property damage, subject to the provisions of Section 15.14 herein, in operating or maintaining the Facilities.

b. Except as specifically provided herein, MES shall furnish all labor, materials, equipment and vehicles necessary to manage, operate and maintain the Facilities in as good operating condition, after making allowance for reasonable wear and tear resulting from normal use and for modifications and upgrades to the Facilities covered by the Agreement, as they were on the Commencement Date.

c. Hiring. In making employment decisions relating to the Facilities, MES shall not discriminate against any individual based on race, sex, color, national origin, age, disability, religion or other attribute protected by Applicable Law. For all operations and maintenance positions at the Facilities, MES shall give consideration to any qualified applicants who may have been terminated from County employment as a direct or indirect result of the County transferring the functions described herein to MES. MES shall seek qualified applicants from the residential communities in the vicinity of the Facilities in the event MES is unable to fill all available positions as described above.

**Section 8.2 Record Keeping Requirements.** MES shall maintain copies of all records required by this Agreement or Applicable Law for a minimum period of five (5) years subsequent to the expiration or termination of this Agreement, as further set forth in Schedule C, which is subject to amendment by the Parties. Such copies may be maintained in an electronic format. MES shall maintain on the Premises and available for review at any time, operational and maintenance records, including, at a minimum, those records listed in Section C.19a.

**Section 8.3 Inspections.**

a. Routine Inspections. MES shall conduct weekly, monthly and annual inspections of the Facilities and shall prepare reports of the inspections. The inspection reports will be signed and dated by the individual making the inspection. A copy of the original inspection

report shall be sent to the County and the original filed in MES' office at the Facilities. The inspection report shall include a list of operational and maintenance deficiencies noted and the timeframe for correcting each of the deficiencies. Subsequent reports will list unresolved deficiencies and the status of work required to address each one.

b. County System Inspections. Employees authorized by the County may visit or inspect the Facilities at any time. During such visit the County's authorized employees shall comply with all visitors' rules of MES. Such visitor's rules shall not unreasonably interfere with access, for authorized County employees, to all portions of the Premises. The County may call upon MES at any time for an oral review of any matter pertaining to the services provided under this Agreement. In the event such visits result in MES employees working after hours or overtime, the County shall reimburse MES for the reasonable costs associated therewith.

c. County Inspection of Facilities Following End of Term. The County shall perform an inspection of the Facilities within thirty (30) days of the end of the Term which shall be scheduled at a time mutually agreed upon by MES and the County. In the event the inspection reveals work not in accordance with the Agreement or lack of repairs or necessary maintenance to the Facilities or equipment, the County shall identify such items in writing to MES. MES shall perform the repairs and maintenance activities identified by the County on a mutually agreed upon schedule. MES shall maintain, on site, all records of operating data and information relevant to the Facilities and Legacy Sites including accounting and financial reports. MES shall provide the County access to all such records upon request, during the inspections.

**Section 8.4 Vehicles and Equipment.**

a. The County shall provide an inventory of existing vehicles and equipment at the Facilities that will be available for the use of MES in performing work under this Agreement. The County inventory shall, for vehicles and major pieces of equipment, include a condition assessment performed by an independent third party. MES shall have fourteen (14) days from the Commencement Date to report any discrepancies it believes exist between the condition assessment and the actual condition of the vehicles and/or equipment.

b. MES shall accept all County-owned vehicles and equipment for the use of its employees in as-is condition except those conditions noted in a written third party inspection report that affect usability or safety of vehicles or equipment. Safety or usability-related conditions shall be promptly remedied by the County. MES releases the County from any claim relating to the condition of the vehicles or equipment.

c. MES shall, as of the Commencement Date, use and maintain all vehicles and equipment provided by the County in accordance with manufacturers' instructions and standard industry practice. MES shall indemnify and hold the County harmless, subject to the provisions of Section 15.14 herein, for the use of the vehicles and equipment and/or the failure to properly maintain or operate any County-owned vehicle or equipment.

**Section 8.5 Technology Support.**

The County's Office of Information and Communication Technology (ICT) will provide support for the network and computer hardware at HWDC and HWTEF. Should MES require support for the network or computer hardware at these locations, notification to ICT must be made through the IT section of MES. ICT support will only be available Monday through Friday from 8:00 am to 5:00 pm. ICT will respond to a request for support within twenty-four (24)

hours of notification from MES IT Division. In the event of unforeseeable causes beyond the control of ICT, the twenty-four (24) hour response time may be extended. ICT will not provide support for the phone system utilized at HWDC or HWTEF.

## **ARTICLE IX**

### **FEE AND PAYMENTS**

#### **Section 9.1 Fiscal Year 2016 Budget.**

a. MES shall perform all work required under this Agreement during the Term for a sum not to exceed Four Million Seven Hundred Thousand Dollars (\$4,700,000) for operating and maintenance expenses for the Facilities, monitoring of Legacy Sites and services to manage current County Capital projects ("Budget").

b. In the event MES believes that it shall incur unanticipated costs as a result of the County requiring MES to provide additional services beyond the scope of this Agreement, including, without limitation, the County causing Waste or Recyclables to be delivered to the Facilities in amounts or types that exceed or are likely to exceed, the estimates provided by the County herein, MES shall submit a written change order request within ten (10) days of becoming aware of the unanticipated costs. If the change order request is not denied within ten (10) Business Days, then it shall be deemed approved.

#### **Section 9.2 Fiscal Year 2017 Budget Preparation.**

a. The County and MES shall cooperate in the preparation of the fiscal year 2017 budget for all of the solid waste management, recycling, compost and mulch, etc. services covered under this Agreement.

b. Emergency and Other Expenses. The County shall execute a change order, or give written approval from the Director to MES, authorizing MES to incur any costs not included

in the Budget for emergency and other expenses which MES reasonably must incur in order to change any condition or emergency arising at the Facilities which, if unchanged or left unabated, would prevent or endanger the ability of MES under the provisions of this Agreement from operating any of the Facilities in compliance with Applicable Law.

**Section 9.3 Direct Debits.** For any goods or services which the County provides or obtains by contract and which MES wishes to obtain through the County or the County contract (e.g., fuel, road vehicle maintenance and/or repair, internet), the amounts incurred by MES under this Agreement shall be charged to the Budget. Such amounts shall not be considered Project Costs.

**Section 9.4 Monthly Reconciliation.**

a. Monthly Statement. By the last day of each calendar month following the Commencement Date, MES shall send the County a monthly statement which shall reflect: (1) the actual expenses incurred by MES as Project Costs during the preceding month, allocated to the expense categories described in Section 9.4b, below; (2) Project Revenues collected during the preceding month, allocated to the revenue categories described in Section 9.4c; (3) a balance statement for the Project; (4) Waste quantities received and transported; and (5) private vehicle counts received by MES during the preceding month. The monthly statement shall also include such other information regarding amounts of Waste and Recyclable Materials accepted, rejected, processed, transferred, transported and otherwise handled by MES that the County may reasonably request. Each statement shall set forth the amount of any moneys payable to MES (Project Costs) and to the County (Project Revenues) for the applicable period, together with supporting electronic documentation including scale records, sufficient to allow the County to verify MES' calculations of the payments owed for such period. Along with each invoice, MES shall submit detailed reports for review and approval that include a breakdown of labor,

equipment, materials and supplies which substantiate the requested monthly payment. The County shall review the invoice and shall either approve or reject the invoice within ten (10) Business Days after receipt. Undisputed amounts in any invoice shall be paid within thirty (30) days after receipt of the invoice by the County.

b. Project Costs. Project Costs shall include the cost of all labor, materials, equipment, services and supplies required to fulfill the scope of work under this Agreement. These shall include, but not be limited to, salaries and contract labor in accordance with the June 1, 2015 MES proposal, supplies and payments made pursuant to contracts listed in Article XI (except direct debits). Project Costs shall be recorded by Capital Project, for capital expenses, or using the following categories, for operating expenses:

301111 – Administration and Engineering

301211 – Solid Waste

301241 – Recycling

301251 – Closed Landfill monitoring

301261 – Scarborough Remediation

301520 - Noxious Weed

301530 – Gypsy Moth

c. Project Revenues. Project Revenues shall consist of all revenues collected by MES in return for providing services within the scope of work of this Agreement including, but not limited to, tipping fees, cash collected at the HWDC, revenues from sales of mulch and compost, revenues from the sale of other materials and license fees. Project Revenues shall be recorded under the following categories:

005500-R2270 – Refuse Licenses

005500-R4405 – WTE – Tipping Fees  
005500-R4419 – WTE Tipping Fee credit (for APG contractor Six-Nations)  
005500-R4420 – Household Waste – Private Vehicle Charges  
005500-R4425 – Recycled Batteries  
005500-R4430 – Recycled Scrap Metal  
005500-R4450 – Sale of Compost  
005500-R4451 – Sale of Mulch  
005500-R4466 – Tipping Fee Landfill  
005500-R4489 – Tire Disposal Fees  
005500-R44XX – Tipping Fee Baltimore County (sub-object T.B.D)  
005500-R6140 – Interest on Misc. Invoices

d. Billing and Payments.

(1) Designated Haulers. MES shall send a monthly invoice to each Designated Hauler having an account for disposal with the County. Invoices shall include the quantity of Waste disposed of, the County legislated cost per ton and the total amount due. Invoices shall require that payment be directed to the MES within thirty (30) days after receipt of the invoice. MES shall diligently pursue payment of outstanding invoices and shall notify the County of any Designated Hauler having an open invoice which is more than sixty (60) days in arrears.

(2) By the last day of each calendar month, MES shall pay the County, by ACH, any and all Project Revenues collected during the preceding calendar month.

**Section 9.5 Harford County Solid Waste Management Project.**

a. Establishment of Project. MES shall establish and maintain within its own books and records the Harford County Solid Waste Management Services Project (“Project”) as a discrete Project for the purpose of recording all of the financial transactions relating to the provision of solid waste management services to the County under this Agreement. All receipts of monies owing to or derived from the operations of the Facilities (including, but not limited to, Project Revenues) shall be credited to the Project; and all expenses of development and operations of the Facilities shall be recorded in the Project.

Moneys credited to the account of the Project may, for the purpose of investing such moneys, be commingled with moneys of other funds and accounts of MES, provided that any earnings or losses from such commingled assets are credited monthly and on a pro-rata basis to the Project.

b. Books and Records, Audit and Reports.

(1) MES shall maintain all books, records and accounts necessary to record all matters affecting the fees, applicable damages or other amounts payable by or to the County or MES under this Agreement or other agreements. MES shall maintain all such books, records and accounts in accordance with Generally Accepted Accounting Principles (“GAAP”). MES’ books, records and accounts shall accurately, fairly and in reasonable detail reflect all MES’ dealings and transactions under this Agreement and other agreements and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. MES shall make any and all records required to be maintained on-site under Section 8.2 available promptly upon the reasonable request by the County. All other books, records and accounts shall be made available for either in-person or electronic inspection,

copying or photocopying by the County within ten (10) Business Days of a written request by the County.

(2) MES shall provide the County with the reports and information set forth in Schedule C. The report format is subject to the approval of the County.

(3) MES certifies that all information MES has provided, or will provide, to the County is true and correct to the best of MES' knowledge and belief and can be relied upon by the County in making payments, or taking any other action with respect to this Agreement.

c. Annual Accounting. Within ninety (90) days following the end of the Term, MES shall provide an accounting to the County of all payments made by the County for the Fiscal Year and all amounts payable by the County for such Fiscal Year. The County shall have the right, during usual business hours, and at its sole expense, to examine and audit pertinent records of MES to verify invoices submitted pursuant to this Agreement.

## ARTICLE X

### UNCONTROLLABLE CIRCUMSTANCES

#### **Section 10.1 Effect of, and Changes Necessitated by, Uncontrollable Circumstances.**

a. Effect of Uncontrollable Circumstances. MES shall not be in default under this Agreement or liable to the County for its failure to perform obligations under this Agreement, if such failure results from an Uncontrollable Circumstance. MES shall diligently pursue actions to overcome or remove such Uncontrollable Circumstance as soon as possible after the condition arises. MES shall put into place measures to reasonably minimize the likelihood of equipment malfunction and damage from forecasted weather events. MES shall adequately address any inquiries of the County Representative regarding conditions caused by the Uncontrollable Circumstance, as well as preventative measures put into place by MES.

b. Changes Necessitated by Uncontrollable Circumstances.

(1) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, MES shall give the County Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to MES), and a description of the conditions preventing the performance of MES' obligations.

(2) If the RTS or the HWDC is not operational due to an Uncontrollable Circumstance, the County and MES shall jointly work together to remove such Uncontrollable Circumstance. Notwithstanding the foregoing, the County may, in its sole discretion, suspend MES activities at the RTS, or the HWDC, as the case may be, if either is completely or substantially inoperable due to an Uncontrollable Circumstance.

(3) MES will consult with the County as to whether and how repairs, replacement or rehabilitation will be made to any of the Facilities that are unavailable due to an Uncontrollable Circumstance, and the County and MES will jointly determine if and how such repairs, replacement or rehabilitation will be made.

**Section 10.2 Mitigation of Costs.** During the period MES is unable to accept Waste or Recyclable Material due to an Uncontrollable Circumstance, MES will utilize its reasonable best effort to mitigate damages and minimize the expense of operating the Facilities in consultation and in agreement with the County.

## ARTICLE XI

### ASSIGNMENT OF CONTRACTS

**Section 11.1 Assignment.** To the extent reasonably practicable, MES shall accept assignment of the following contracts and MES shall manage those contracts which are not assigned:

- a. Recycling contracts.

- (1) Computer and Electronics Recycling  
Pasadena Recycling LLC  
Contract Date: May 7, 2009
  - (2) Collection and Disposal of Household Hazardous Waste  
MES  
Contract Date: April 9, 2004
  - (3) White Goods and Scrap Metal Recycling Disposal Services  
Integrity Recycling, Inc.  
Contract Date: May 9, 2013
  - (4) Maintenance of Eight Used Oil Recovery Sites  
MES  
Contract Date: June 17, 2013
  - (5) CRT Television and CRT Computer Monitor Recycling Services  
Pasadena Recycling, LLC  
Contract Date: October 20, 2014  
Expiration Date: March 31, 2015
- b. Design contracts for engineering services.
- (1) HWDC Landfill Engineering Services  
EA Engineering, Science & Technology  
Contract Date: July 12, 2012
  - (2) Former Spencer's Rubble Landfill East – Landfill Closure  
Engineering Services  
SCS Engineers  
Contract Date: November 16, 2012
  - (3) Tollgate Landfill GCCS Modifications  
Penn Environmental a & Remediation, Inc.  
Contract Date: July 29, 2014
- c. Construction contracts.
- (1) Gas Remediation and Upgrade for Landfills  
Northeast Maryland Waste Disposal Authority  
Contract Date: June 9, 2010
  - (2) HWDC Cell N2 Construction and Cells A-J Closure  
Dixie Construction Company  
Contract Date: April 21, 2015

- (3) Spencer's East Site Rubble Landfill Closure  
Dixie Construction Company  
Contract Date: April 21, 2015
- d. Emergency Response, Debris Management, etc.
  - (1) AshBritt, Inc.  
Contract Date: August 19, 2010
  - (2) DRC Emergency Services, LLC  
Contract Date: August 19, 2010
- e. Standby Contract for Emergency Disaster Debris Removal Monitoring Services.
  - (1) Thompson Consulting Services, LLC  
Contract Date: June 25, 2013
  - (2) Witt O'Brien's LLC  
Contract Date: June 20, 2013
- f. Environmental Monitoring Services
  - Northeast Maryland Waste Disposal Authority  
Contract Date: June 30, 2015
- g. Vegetative Stabilization
  - Erosion Control & Landscape Services, Inc.  
Contract Date: May 14, 2014
- h. Laboratory Analysis of Environmental Samples
  - QC Labs, Inc. d/b/a QC, Inc. (Atlantic Coast Lab)  
Contract Date: November 26, 2014
- i. Scrap Tire and Asbestos Agreement With Baltimore County
- j. Ash Scrap Tire Agreement With Baltimore City
- k. Standby Leachate Hauling
- l. Scale Maintenance
- m. Parts Cleaner Service
- n. Welding

- o. Janitorial
- p. Pest Control
- q. HVAC
- r. Grounds Maintenance
- s. Seeding and Mulching
- t. Portable Restrooms
- u. Weekly Road Sweeping
- v. Utilities (phone, electric, etc.)
- w. Paint Recycling
- x. Used cooking oil
- y. Textile recycling
- z. APG Tipping Fees for Disposal of Solid Waste  
Contract Date: \_\_\_\_\_, 2015

## **ARTICLE XII**

### **BREACH, ENFORCEMENT AND TERMINATION**

#### **Section 12.1 Breach.**

a. Actions. The Parties agree that in the event any Party materially breaches an obligation under this Agreement or any representation made by any Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. No Party shall have the right to terminate this Agreement except as provided in Sections 12.2 or 12.4 hereof.

b. No Special, Consequential or Indirect Damages. In no event, whether based upon contract, tort or otherwise arising out of the performance or nonperformance by MES or the County of any obligation of MES or the County under this Agreement, will MES or the County be liable or obligated in any manner to pay special, consequential, punitive or indirect damages except as specifically provided in this Agreement.

#### **Section 12.2 Termination for Default.**

a. Termination by MES. MES shall have no right to terminate this Agreement for any reason whatsoever, except if one or more of the following events (each an “Event of Default”) shall happen:

(1) if default shall be made in the payment of all or any portion of the undisputed fees authorized under this Agreement when due pursuant to Section 9.4a and such default shall continue for a period of thirty (30) days after MES has given the County written notice of the payment default;

(2) the repeated failure or refusal by the County substantially to perform or observe any covenant, agreement or condition on its part provided in this Agreement (other than a default described in clause (1) above), except that no such failure or refusal shall give MES the right to terminate this Agreement for cause unless:

(a) MES has given prior written notice to the County stating that a specified failure or refusal to perform or observe exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give MES the right to terminate this Agreement for cause unless such breach is corrected within a reasonable period of time, and

(b) The County has neither challenged in an appropriate forum MES' conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than thirty (30) days from the date of the notice given pursuant to clause (a) of this subsection (but if the County shall have diligently taken steps to substantially correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

b. Proceedings Brought by MES.

(1) If an Event of Default shall happen and shall not have been remedied, then and in every such case, MES may proceed to protect and enforce its rights under the Agreement by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or in the enforcement of any other legal or equitable right as MES shall deem most effectual to enforce any of its rights or to perform any of its duties under the Agreement.

(2) Remedies not Exclusive. No remedy conferred upon or reserved to MES by the terms of this Agreement or Applicable Law is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

c. Termination by County. The County shall have no right to terminate this Agreement for cause except if one or more of the following events have happened:

(1) if default shall be made in the payment of all or any portion of the undisputed fees authorized under this Agreement when due pursuant to Section 9.4d(2) and such

default shall continue for a period of thirty (30) days after MES has given the County written notice of the payment default;

(2) the repeated failure or refusal by MES substantially to perform any material obligation under this Agreement, except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(a) The County has given prior written notice to MES stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of MES and which will, in its opinion, give the County the right to terminate this Agreement for cause under this subsection unless such breach is substantially corrected within a reasonable period of time, and

(b) MES has neither challenged in an appropriate forum the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than thirty (30) days from the date of the notice given pursuant to clause (a) of this subsection (but if MES shall have diligently taken steps to correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as MES is continuing to take such steps to correct such breach).

d. Proceedings Brought by County.

(1) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the County may proceed to protect and enforce its rights under the Agreement by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against MES as if MES were the trustee of an express trust, or in the enforcement of

any other legal or equitable right as the County, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under the Agreement.

(2) Remedies not Exclusive. No remedy conferred upon or reserved to the County by the terms of this Agreement or Applicable Law is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

e. Termination Costs. In the event of a termination for cause pursuant to this Section 12.2, the County shall within sixty (60) days of the effective date of termination pay MES the following amounts without set-off or recoupment; provided, however, that this shall not constitute a waiver of MES' or the County's rights and remedies under this Agreement, at law, or in equity:

(1) An amount sufficient, when combined with any monies held by MES for the benefit of the County in the Special Purpose Fund, to satisfy all outstanding Project Costs accrued as of the effective date of termination, or if this Agreement is only being terminated in part, the proportionate share of accrued Project Costs relating to the portion of the Agreement being terminated. Any obligations that extend beyond the effective date of termination shall be the responsibility of MES. Project Costs shall be reimbursable if they are allowed under the provisions and in accordance with the procedures defined in the latest edition of the Statement of Financial Accounting Standards No. 146 (FAS146) "Accounting for Costs Associated with Exit or Disposal Activities".

(2) Where the County is the defaulting party, an amount sufficient to compensate MES for any of the reasonable costs of terminating this Agreement and closing down its operations and support activities, including normal costs related to termination of

employees or subcontractor relationships related to the Facilities as allowed under the provisions and in accordance with the procedures defined in the latest edition of the Statement of Financial Accounting Standards No. 146 (FAS146) "Accounting for Costs Associated with Exit or Disposal Activities".

(3) In the event the funds held by MES in the Project exceed any termination costs owed, the difference shall be paid to the County.

f. Accounting and Examination of Records After Default. MES covenants that if an Event of Default shall have happened and shall not have been remedied, the books of records and accounts of MES and all other records relating to the Facilities and the Legacy Sites shall at all times be subject to the inspection and use of the County and of its agents and attorneys (except for any books, records and accounts that are privileged or otherwise required to be maintained as confidential under Applicable Law). MES covenants that if an Event of Default shall happen and shall not have been remedied, MES, upon demand of the County, will account for all monies, securities and funds pledged or held under the Agreement for such period as shall be stated in such demand.

**Section 12.3 Waiver.** Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any covenant or agreement contained in this Agreement is breached by any Party and thereafter waived by any other Party, such waiver shall be limited to the particular breach so waived and will not be deemed to waive any other breach under this Agreement.

**Section 12.4 Termination for Convenience.**

a. County's Right to Terminate Subsequent to Commencement Date. Upon providing ninety (90) days prior written notice to MES, the County may terminate this Agreement for its convenience. Upon termination of this Agreement for convenience, the County shall pay to MES the proportionate and applicable Termination Costs specified in Section 12.4b below.

b. Termination Costs. In the event of a termination for convenience pursuant to this Section 12.4, the County shall pay MES the following amounts without set-off or recoupment:

(1) An amount sufficient, when combined with any moneys held by MES in the Special Purpose Fund, to satisfy outstanding Project Costs including, without limitation, the amounts owed for salaries, services, tipping fees, material, supplies, utilities, insurance, equipment financing agreements or installment purchase agreements.

(2) An amount sufficient to reimburse MES for any of the reasonable costs of terminating this Agreement and closing down its operations and support activities, including normal costs related to termination of employees or subcontractor relationship related to the Facilities as allowed under the provisions and in accordance with the procedures defined in the latest edition of the Statement of Financial Accounting Standards No. 146 (FAS146) "Accounting for Costs Associated with Exit or Disposal Activities".

**Section 12.5 Survival of Certain Rights and Obligations.** The rights and obligations of the Parties under Sections 3.5, 8.2, 12.2f, 15.14 (and any sections citing to 15.14) and C.19 survive any termination of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations of any Party that have accrued before the date of such termination.

**Section 12.6 Limitation of Defenses.** The County and MES agree that neither Party may assert as a defense against any claim by the other Party for failure to perform its obligations (i) impossibility or impracticability of performance unless such defense constitutes an Uncontrollable Circumstance, (ii) the existence, nonexistence, occurrence or nonoccurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of MES or the County, (iii) commercial frustration of purpose, or (iv) contract of adhesion.

**Section 12.7 Ownership of Documents.** In the event this Agreement is terminated by either party, all design, permitting and construction documents, operating and maintenance manuals and records, and other documentation required herein, both written and electronic in form, related to the Facilities shall become the property of the County. Within thirty (30) days of receiving written notice from the County, MES shall deliver the documents to the County.

## **ARTICLE XIII**

### **TERM**

**Section 13.1 Term.** This Agreement is in effect from the date upon which Executive Order 15-11 becomes effective and, unless sooner terminated in accordance with Article XII, shall continue in effect until June 30, 2016.

**Section 13.2 Conditions Precedent.**

a. The obligations of the County and MES pursuant to this Agreement shall be subject to the satisfaction of each of the following conditions precedent, and this Agreement shall be null and void unless each has been satisfied by the Commencement Date of this Agreement:

- (1) Executive Order 15-11 becomes effective.
- (2) Approval of this Agreement by the Harford County Board of Estimates.

(3) No Uncontrollable Circumstance exists that is reasonably expected materially to increase Project Costs under this Agreement, or that will impede the ability to perform hereunder.

b. In the event of a termination in accordance with Section 12.2, the County shall pay to MES all of the Termination for Convenience costs specified in Section 12.4.

#### **ARTICLE XIV**

##### **REPRESENTATIONS AND WARRANTIES**

**Section 14.1 Representations and Warranties of MES.** MES hereby makes the following representations and warranties, as of the date of execution and delivery of this Agreement, to and for the benefit of the County:

a. MES is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

b. MES has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by MES and constitutes a legal, valid and binding obligation of MES, enforceable against MES in accordance with its terms.

c. Neither the execution and delivery by MES of this Agreement, nor the performance of MES' obligations in connection with the transactions contemplated herein nor MES' fulfillment of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which MES is a party or by which MES or any of its properties or assets are bound, or constitutes a default thereunder.

d. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by MES of this Agreement except those that have been duly obtained or made.

e. Except as disclosed to the County in writing, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the MES' knowledge, threatened, against MES, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by MES in connection with the transactions contemplated hereby.

f. All information contained in any statement, schedule, report, certification, audit, agreement, permit, plan, application, record or any other document previously or now given by MES in connection with the provisions of this Agreement is in all respects true and accurate to the best of MES' knowledge and belief and neither MES or any of its officers or employees has omitted to state any material fact or any fact necessary to make such information not misleading.

**Section 14.2 Representations and Warranties of the County.** The County hereby makes the following representations and warranties to and for the benefit of MES:

a. The County is a political subdivision of the State of Maryland and a body politic and corporate duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

b. The County has duly authorized the execution of this Agreement and this Agreement has been duly and validly executed and delivered by the County and constitutes a

legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

c. Neither the execution and delivery by the County of this Agreement, nor the performance by the County of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the County of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder or (iii) results in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the County, except as expressly contemplated by this Agreement.

d. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the County, except such as have been duly obtained or made.

e. Except as disclosed to MES, in writing, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the County's knowledge, threatened, against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by MES in connection with the transactions contemplated hereby.

f. All information contained in any statement, schedule, report, certification, audit, agreement, permit, plan, application, record or any other document previously or now given by

the County in connection with the provisions of this Agreement is in all respects true and accurate to the best of the County's knowledge and belief and neither the County nor any of its officers or employees has omitted to state any material fact or any fact necessary to make such information not misleading.

g. To the best of the County's knowledge and belief the County has all Governmental Approvals required to be issued to it by any Governmental Authority on account of any or all of its ownership and activities applicable to the Facilities and the Legacy Sites, and to the best of the County's knowledge and belief it is in full compliance with the terms and conditions of all such Governmental Approvals, except as specifically disclosed to MES prior to the execution of this Agreement. No change in the facts or circumstances reported or assumed in the application of or granting of such Governmental Approvals exists to the best of the County's knowledge and belief, and such Governmental Approvals are in full force and effect.

## ARTICLE XV

### MISCELLANEOUS

#### Section 15.1 Insurance.

a. Required Insurance. MES shall obtain and keep in force, during the term of this Agreement, insurance as required herein and/or by Applicable Law, which shall not be less than the maximum self-insurance provided by the Treasurer of Maryland pursuant to the State Finance and Procurement Article, Sections 9-105(a) and (c), Annotated Code of Maryland, which is, through September 30, 2015, limited to \$200,000.00 per claim to third parties, and including, but not limited to, any currently existing workers' compensation liability insurance. Following September 30, 2015 the maximum self-insurance provided by the Treasurer of Maryland is limited to \$400,000.00 per claim to third parties, and including, but not limited to,

any currently existing workers' compensation liability insurance. MES may provide any such insurance through a self-insurance program of MES or of the State of Maryland. Except as permitted by the Treasurer of Maryland, MES shall not be obligated to provide property insurance on the Facilities, or any portion thereof. At the written request of the County, and at the cost and expense of the County, MES shall coordinate with the State Treasurer to obtain additional insurance coverages as deemed necessary by the County.

b. MES shall be responsible for the cost of workers' compensation claims MES retains under its self-insurance program.

c. Except where the contractual obligations of this Agreement assign responsibility for losses, costs, claims or damages to one or the other party, MES and the County mutually waive the right to recover from each other for any loss or damage to each other's property at the Facilities, workers' compensation claim costs arising out of operation of the Facilities or any other loss due to bodily injury or property damage arising out of ownership or operation of the Facilities. Any MES or County property, workers' compensation, general liability, excess liability or automobile policies pertaining to ownership or operation of the Facilities shall contain a waiver of subrogation to the extent permitted by Applicable Law.

d. MES shall be responsible for payment to the County for theft of County property by MES employees.

**Section 15.2 Assignment.** Neither MES nor the County may assign this Agreement without the prior written consent of the other Party.

**Section 15.3 Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

**Section 15.4 Taxes.** In the event MES is required by Applicable Law to remit or pay Taxes which are the County's responsibility hereunder, the County shall promptly reimburse MES for such Taxes. In the event the County is required by Applicable Law to remit or pay Taxes which are MES' responsibility hereunder, MES shall promptly reimburse the County for such Taxes. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under Applicable Law.

**Section 15.5 Notices.** All notices, designations, consents, approvals and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telefaxed, delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or dispatched by next day delivery service and in any case shall be addressed as follows:

If to MES:

Maryland Environmental Service  
259 Najoles Road  
Millersville, Maryland 21108  
Attention: Director

If to the County:

Harford County, Maryland  
212 S. Bond Street  
Bel Air, MD 21014-  
Attention: Director, Department of Public Works

Changes in the respective addresses to which such communication may be directed may be made from time to time by any Party providing notice to the other Party. Any such communications given in accordance with this Section 15.5 shall be deemed to have been given five (5) Business Days after the date of mailing. Communications given by any other means shall be deemed to have been given when delivered.

**Section 15.6 Entire and Complete Agreement.** This Agreement (including all Schedules) constitutes the entire and complete agreement of the Parties with respect to its subject matter and supersedes all prior or contemporaneous understandings, arrangements, commitments and representations, all of which, whether oral or written, are merged into this Agreement. The Schedules to this Agreement are an integral part of this Agreement and shall be afforded full force and effect as though incorporated in their entirety in the Articles hereof.

**Section 15.7 Binding Effect.** This Agreement binds and inures to the benefit of the Parties and any successor or assignee acquiring an interest hereunder permitted by Section 15.2.

**Section 15.8 Further Assurances.** Each Party shall execute and deliver any instruments and perform any acts that may be necessary and reasonably requested by the other Party in order to give full effect to this Agreement.

**Section 15.9 Applicable Law.** The laws of the State of Maryland shall govern the validity, interpretation, construction and performance of this Agreement.

**Section 15.10 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered together constitute one and the same instrument.

**Section 15.11 Amendment or Waiver.** Neither this Agreement nor any provision of this Agreement may be changed, modified, amended or waived except by a written instrument signed by MES and the County.

**Section 15.12 Relationship of the Parties.** No Party has any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute one Party a partner, agent or legal representative of any of the other Parties or to create any fiduciary relationship between the Parties.

**Section 15.13 Public Disclosure.** Promptly following the written request of the County Representative, MES shall provide the County Representative with any information within its control which is related to the Project and subject under Applicable Law (including Title 4, of the General Provisions Article of the Annotated Code of Maryland) to disclosure.

**Section 15.14 Limitation of Liability and Indemnification.** The execution and delivery of this Agreement by MES and the County shall not impose any personal liability on the members, officials, officers, employees or agents of MES or the County. No recourse will be had by a Party for any claims based on this Agreement against any member, officer, official, employee or other agent of the other Party in his or her individual capacity, all such liability, if any, being expressly waived by the County and MES by the execution of this Agreement. However, subject to the Local Government Tort Claims Act, Md. Cts. & Jud. Proc. Code Ann. §§5-301, et seq. (2006 Repl. Vol) (“LGTCA”); Md. Code Ann. Art. 25A, § 1A (2003 Repl. Vol); and Md Code Ann., Cts. & Jud. Proc. §5-509 (2006 Repl. Vol.), and the Maryland Tort Claims Act, Md. State Government, Ann. §§12-201, et seq., all as amended from time to time and as otherwise provided in Schedule D, the County and MES agree to indemnify and hold each other harmless from any liability, damage, expense, cause of action, suits, claims or judgments arising from injury to persons or property or otherwise which arises out of the act, failure to act or negligence of the indemnifying party in connection with or arising out of the activity which is the subject of this Agreement. Any obligation or liability of the County or MES arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act and the Maryland Tort Claims Act, as the case may be. Any indemnification given in this Agreement is not intended to be a waiver of governmental

immunity by the Parties or to create any rights in third parties. The Parties agree that the County may self-insure.

**Section 15.15 Contractual Obligation.**

- a. This Agreement is a general contractual obligation of the County.
- b. The effective date of this Agreement shall be the Commencement Date.
- c. The obligations of the County contained herein are contingent upon approval of this Agreement by the Harford County Board of Estimates.

**Section 15.16 Release of Environmental Damages; Indemnity.**

a. Release From Environmental Damages. The County unconditionally releases MES from and against any and all liability to the County, both known and unknown, present and future, for Environmental Damages (as defined in Schedule D) to the County arising out of any violation of Applicable Law by the County, at any time, or the presence, as of the Commencement Date, of Hazardous Materials (as defined in Schedule D) on, under, or about (i) the Legacy Sites and (ii) the Facilities.

b. Obligation to Indemnify, Defend, Reimburse and Hold Harmless. The County shall, to the extent permitted by Applicable Law, indemnify, defend, reimburse and hold MES, and its officers, employees, agents and contractors, harmless as provided in Schedule D hereunder.

c. Indemnification shall not apply if any release of Hazardous Material is the result of any negligent act or omission of MES employees or agents.

IN WITNESS WHEREOF, MES and the County have executed this Agreement this

19<sup>th</sup> day of August, 2015.

WITNESS/ATTEST

**MARYLAND ENVIRONMENTAL SERVICE**

Shirley A. Raas

By: James M. Harkins (SEAL)  
Name: James M. Harkins  
Title: Director

Approved as to form and legal sufficiency  
this 19 day of August, 2015.

Sean L. Coleman  
Sean L. Coleman  
Assistant Attorney General

**HARFORD COUNTY, MARYLAND**

Jane Ballard

By: Barry Glassman (SEAL)  
Barry Glassman  
County Executive

Approved as to form and legal sufficiency  
this 17 day of August, 2015.

Melissa L. Lambert  
Melissa L. Lambert  
County Attorney

Reviewed and concur this 17<sup>th</sup> day of  
August, 2015.

Timothy F. Whittie  
Timothy F. Whittie P.E., Director  
Department of Public Works

Reviewed and concur this 17 day of  
August, 2015.

Robert F. Sandlass, Jr.  
Robert F. Sandlass, Jr.  
Treasurer

## **Schedule A**

### **DEFINITIONS AND INTERPRETATION**

As used in this Agreement, the following terms shall have the meanings set forth below:

“Agreement” means this Agreement between MES and the County (including the Exhibits and Schedules to this Agreement and documents incorporated by reference), as amended or modified from time to time.

“Applicable Law” means (i) any applicable statute, common law, treaty, rule, code, ordinance, regulation or order of any Governmental Authority, whether local, State or Federal, including, without limitation, the MES Act, (ii) any license, permit, franchise, certificate or other authorization of, and required registration or filings with any Governmental Authority, or (iii) any judgment, decision, decree, injunction, order or the like of any Governmental Authority.

“Approved Baltimore County Waste” means Waste that the County is obligated to accept from Baltimore County at the Facilities in accordance with the 2008 Municipal Solid Waste Disposal Agreement between Baltimore County and Harford County.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday or Friday which is not a public holiday recognized by MES.

“Commencement Date” means the date on which Executive Order 15-11 becomes effective.

“County” means Harford County, Maryland.

“County Representative” means, with respect to any direction, instruction or other action of the County in accordance with this Agreement, an individual duly authorized by a written order executed by the County Director of Public Works, the current authorization of which shall be

confirmed at any time at the request of MES prior to such direction, instruction or other action becoming effective.

“Designated Hauler” means any Person licensed by the County or otherwise expressly authorized by the County delivering Waste or Recyclables to the Facilities pursuant to this Agreement or the Harford County Code, including employees or agents of the County.

“Director” means the Harford County Director of Public Works.

“Event of Default” means an Event of Default as defined in Section 12.2.

“Facility” or “Facilities” means the Harford Waste Disposal Center (including the homeowner drop-off area; recycling areas for white goods, textiles, wet cell batteries, electronic waste, empty propane cylinders, latex paint, single stream recyclables, used oil, antifreeze, stale gasoline/oil mixture and tires; and the mulch and compost facility). Facilities at the HWDC include a scale and scalehouse, administrative offices, maintenance buildings, equipment storage areas, parking areas, leachate holding tanks, a stormwater management system, water and septic systems, groundwater monitoring wells, groundwater treatment system for the closed cells of the Scarborough Landfill, borrow and stockpile areas for daily cover and all other structures, features, fixtures, installed equipment and improvements on the Premises present at the site on the Commencement Date or provided by MES pursuant to this Agreement. “Facilities” also includes the yard trim drop-off facility, groundwater treatment system and gas flare for the closed Tollgate Landfill and includes the gas flare maintained by the County at Bush Valley.

“Governmental Approval” shall mean any consent, license, approval, registration, filing, permit, authorization, ruling, tariff, rate, certification, exemption, variance, claim, order, judgment, decree, publication, notice to, declaration of or with, or registration by or with, any Governmental Authority.

“Governmental Authority” means any court, tribunal, authority, agency, commission, official or other instrumentality of the United States, any arbitrator, any foreign country or any domestic or foreign state, county, city or other political subdivision or any Native American tribal council or similar governing entity having jurisdiction over the applicable subject matter.

“Hazardous Waste” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous waste” as defined under the Solid Waste Disposal Act, 42 U.S.C. §§6901, et seq., as amended, or any successor legislation, and the regulations thereunder, and “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, et seq., as amended, or any successor legislation, and the regulations thereunder, or any other applicable Federal, State or local law and the regulations thereunder, provided, however, that household hazardous waste shall not constitute Hazardous Material. Hazardous Material shall include radioactive materials. If any Governmental Authority now or hereafter having appropriate jurisdiction shall determine that substances which were not, as of the Commencement Date, considered harmful, toxic or dangerous, are harmful, toxic or dangerous, then such substances shall be Hazardous Waste for the purposes of this Agreement as of the effective date of any such determination. For purposes of this Agreement, Hazardous Waste shall not include the minimal Household Hazardous Waste.

“Home Owners’ Drop Off” or “HODO” means the facility at the HWDC which receives Waste, Recyclables and certain yard waste from private County residents only.

“Household Hazardous Waste” or “HHW” means minimal quantities of hazardous materials included in residential waste which would otherwise be considered to be hazardous waste but are exempted under the provisions of 40 CFR 261.4(b)(1).

“HWDC” means the Harford Waste Disposal Center, owned and operated by the County, located in Street, Maryland.

“Internal Revenue Code” means Title 26 of the United States Code, as the same may be revised, expanded or amended.

“Legacy Sites” means the closed landfills maintained by the County which are Scarboro Landfill (except the groundwater treatment system), Bush Valley (except the gas flare), Tollgate (except the yard trim site, gas flare and groundwater treatment system), Spencer’s, Madonna, Abingdon, Mullins and Perryman.

“MES” means Maryland Environmental Service.

“MES Act” means Title 3, subtitle 1 of the Natural Resources Article, Annotated Code of Maryland.

“MES Representative” means the Director of MES, or any other Person designated in writing by the Director of MES. The current authorization of the designee shall be confirmed by the Director of MES at any time at the request of the County Representative prior to any direction, instruction or other action of the designee becoming effective.

“Monthly Operations Report” means the report generated in accordance with Schedule C of this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity or a Governmental Authority.

“Premises” means the property owned by the County in fee simple on which the Facilities are located.

“Project Costs” means all actual costs or expenses of MES (excluding direct debits described in Section 9.3), or amounts payable by MES, in connection with the design, construction, equipping, development and operation of the Facilities and monitoring of Legacy Sites, or the performance by MES of its obligations under this Agreement, with respect to the Facilities, including (without limitation) an amount equal to the aggregate costs of design, construction, operation, maintenance, repair, equipping and management of the Facilities, including: (i) the reasonable costs of any services provided under operating contracts, service charges, rentals or tipping fees paid by MES to owners or operators of firms hauling Waste or Recyclables from the Facilities; (ii) except as otherwise provided herein, the costs of removal, handling and disposal of Unacceptable Material; (iii) the reasonable costs of direct labor, supervision, insurance costs attributable to operating the Facilities, Taxes, permits, materials, supplies, transportation, utilities, tools, equipment, and rentals ; (iv) MES overhead and fringe benefits, as provided for in the June 1, 2015 MES Proposal, attributable to services provided under this Agreement; and (v) all costs, liabilities and penalties under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq.), the Solid Waste Disposal Act (42 U.S.C. §6901, et seq.) and the Maryland Hazardous Substances Spill Response Law (Maryland Annotated Code, Environment Article §§7-201, et seq.) or comparable local, State or federal law, arising solely from activities hereunder, unless such costs, liabilities or penalties are incurred as a result of the negligent acts or omissions or willful misconduct of MES, its agents, servants, employees, contractors, subcontractors or assigns. Project Costs shall not include any costs necessitated by the negligence of MES or its employees or MES’ failure to maintain or repair vehicles, equipment or the Facilities.

“Project Revenues” has the meaning set forth in Section 9.4c.

“Prudent Solid Waste Management Practices” means, as of any particular time, any of the practices, methods and acts (not limited to the optimum practice, method or act) engaged in or generally acceptable to a significant portion of the solid waste management industry at or prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts and circumstances known at the time a decision was made, could have been expected to accomplish the desired results consistent with good business practices, reliability, economy, safety and expedition.

“Receiving Hours” means the periods for waste acceptance at the Facilities provided in Section 2.3.

“Recyclables” means residential and commercial solid waste collected within Harford County and delivered to the Facilities which meets the requirements of the single stream recycling program as defined by Harford County Contract 10-231 or any subsequent contract relating to the same subject matter.

“Recycling Transfer Station” or “RTS” shall mean the facility located at the HWDC which receives deliveries of Recyclables and which enables the Recyclables to be loaded onto vehicles for transport to a material processing facility.

“Refuse Disposal Permit” means the permit(s) issued by the Maryland Department of the Environment stipulating the terms and conditions under which Waste and Recyclables shall be managed at the Facilities.

“Routine Operation, Monitoring and Maintenance” means those activities that are included and covered under the approved Harford County 2016 FY Current Expense Budget and/or are described in Schedule C.

“Scalehouse” means an enclosed structure constructed at each inbound and outbound truck scale.

“Scarboro Landfill” means that portion of the HWDC property which contains the closed landfill cells.

“Services” means the work by MES which provides for the design, permitting, construction, acceptance, processing, transfer and disposal of Waste and Recyclables at the HWDC, HODO, Recycling Transfer Station, and all associated ancillary facilities, including staffing of the scale house at the HWTEF.

“Solid Waste Management Plan” means the County’s comprehensive solid waste management plan which is in effect and approved by the State from time to time.

“State” means the State of Maryland.

“Stationary equipment” means mechanical equipment that does not move.

“Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, value-added, occupation, property, excise, severance, windfall profits, stamp, license, payroll, social security, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a tax return).

“Unacceptable Material” means any materials and debris which is not normally accepted at facilities similar to the Facility in accordance with Prudent Solid Waste Management Practices, or Waste that is not permitted to be received at the Facility under Applicable Law or County Rules and Regulations in effect at the time of the delivery, including, but not limited to, land-clearing and

construction and demolition debris, controlled hazardous substances as those terms are defined in the Solid Waste Management Plan. Unacceptable Material that is delivered in minimal quantities and concentrations as part of normal collections shall constitute Waste.

“Uncontrollable Circumstance” means an event or circumstance which hinders or prevents MES from performing one or more of its obligations under this Agreement which event or circumstance was not anticipated as of the execution date of this Agreement, is not within the reasonable control of MES, is not the result of the negligence or willful misconduct of MES or its employees or contractors and could not, by the exercise of MES’ commercially reasonable efforts, be overcome or avoided or caused to be avoided, including, but not limited to, flood, storm, strike, earthquake, epidemic, war, riot, act of terrorism, civil disturbance, sabotage, act of God, change in Applicable Law or any condition or situation which either party reasonably believes imminently endangers or is reasonably likely to imminently endanger life or property or any other cause beyond the control of MES.

“Waste” means that material or debris allowed to be deposited at the HWTEF or the HWDC under the applicable Refuse Disposal Permit and the Harford County Solid Waste Management Rules and Regulations.

“WTE Contract” means the Amended and Restated Waste Supply Contract dated June 12, 2002, as amended, between Harford County, Maryland and the Northeast Maryland Waste Disposal Authority.

“WTE Termination Date” means the date on which operations are halted at the HWTEF and Designated Haulers are directed to take Waste from the County to the ESL which shall be March 17, 2016.

**SCHEDULE B**

Intentionally omitted

## **SCHEDULE C**

### **GENERAL OPERATION OF FACILITIES**

**Section C.1 General.** MES shall perform Services required under this Agreement in accordance with Applicable Law and the Performance Standards. This schedule applies to Facilities only and not Legacy Sites, except as specifically provided herein.

**Section C.2 General Maintenance Obligations.** MES shall perform all predictive, preventive and corrective maintenance procedures in accordance with generally accepted or recommended industry maintenance practices, procedures and standards, but in no event less frequently than that recommended or specified in the manufacturers' warranties.

**Section C.3 General Operational Obligations.** At a minimum, MES shall perform the following:

a. Perform daily operations including loading of bins and trailers; coordinating with transportation services; staging, sequencing, and transferring Waste for transport; pushing and spreading trash; mining and placing daily cover; maintaining landfill roads (including sweeping, snow removal and dust control); and traffic control.

b. Dispose of Hazardous Waste and Waste in an appropriate manner in accordance with Applicable Laws and the Performance Standards.

c. Provide, operate and maintain all mobile equipment and rolling stock at the site deemed necessary for the safe and effective operation of the Facilities.

d. Operate and maintain all equipment at the Facilities including but not limited to shredders, compactors, electrical systems and ventilation systems.

e. Perform modifications or upgrades which have been approved in writing by the County to the Facilities to ensure they are in good working order throughout the Term of the Agreement.

f. Provide emergency response and spill containment services in accordance with Applicable Laws and the Performance Standards.

g. Implement backup plans in the event any of the Facilities are not available.

h. Implement the noxious weed and gypsy moth control programs.

**Section C.4 Inspection of Waste and Recyclables at HWDC. MES shall:**

a. Inspect incoming municipal solid waste to determine whether such waste is in conformance with the Refuse Disposal Permit. It shall be MES' responsibility to monitor and control incoming materials to the Facilities and HWTEF, to assure compliance with Applicable Law for the Facilities. This does not include any activity at ESL.

b. In the event that Unacceptable Materials are delivered to the Facilities, MES shall separate the Unacceptable Material from the Waste and Recyclables and will contact the hauler responsible for delivery of the Unacceptable Material and arrange for its prompt removal. If the Unacceptable Material is discovered and the hauler cannot be identified, MES shall segregate Unacceptable Materials from Waste and Recyclables and properly handle, store and dispose of such materials in accordance with Refuse Disposal Permit requirements, taking all due precautions to protect the health of workers and prevent contamination of the Facilities, Premises, equipment or other municipal solid waste. When detected, before unloading, vehicles carrying Unacceptable Materials shall be turned away prior to tipping. When Unacceptable Material is received, MES shall take other measures for its disposal in accordance with the requirements of Applicable Law.

c. Report verbally within sixty (60) minutes to the County Representative the receipt of any Unacceptable Material at the Facilities with a follow-up written report to the County Representative within twenty-four (24) hours of the receipt thereof. Said report shall include all details known regarding said waste, such as origin, time of delivery, volume, weight and any information known concerning its composition. MES shall be responsible for the handling and disposal of all Unacceptable Material received at the Facilities in accordance with Applicable Laws.

d. Inspect incoming loads of Recyclables to ensure that they are acceptable. Properly dispose of materials which are not acceptable as Recyclables.

**Section C.5 Processing of Waste and Recyclables at HWDC.** MES shall, in accordance with any and all applicable guidance and direction from MDE, and action plans approved by MDE:

a. Push and spread trash at the HWDC and generally operate the working face in an orderly and efficient manner including the mining, placement, and grading of intermediate and daily cover, and seeding and mulching inactive areas.

b. Develop and maintain a fill plan.

c. Provide traffic control at the HWDC working face and the HODO.

d. Check loads for Unacceptable Material.

e. Remove Unacceptable Materials delivered to the working face and, other than materials such as mattresses and tires which can be disposed of at the HODO, dispose of the Unacceptable Material as provided herein.

f. Process, load, and haul Waste and Recyclables as necessary.

g. Coordinate the availability of empty trailers for Recyclables loading so that there are always a sufficient number.

h. Load Recyclables into transfer trailers. MES shall ensure that transport vehicles are not loaded beyond the capacity allowed by Applicable Laws.

**Section C.6 Utilities and Support Systems.** MES shall operate, as appropriate, and maintain all Facility support systems, including, but not limited to, potable water, storm drainage, wastewater collection and conveyance. As of the Commencement Date, MES shall be responsible for supplying and paying for all utilities necessary for the operation of the Facilities including, but not limited to, electric, natural gas, fuel oil, telephone, cable and water and sewer. MES shall arrange for service and maintenance of the utilities and payment of all utility bills. MES shall pay such bills as required by the applicable utility. MES shall make provisions for fueling of on-site equipment and shall insure that fuel paid for by the County is used only at the Facilities or for activities directly associated with the operation of the Facilities. MES shall call and schedule periodic fuel deliveries as required. The cost of fuel delivered to the Facilities under the County's fuel contract shall be charged to the Budget. MES shall be responsible for the cleanup and remediation of spills associated with on-site equipment fueling systems.

**Section C.7 Equipment, Vehicles and Tools.** MES shall, throughout the Term of this Agreement, operate and maintain all equipment, vehicles and tools in a proper state of repair and in a cost-effective manner such that they reliably and efficiently perform the purpose for which they were intended. MES shall regularly inspect equipment, vehicles and tools and perform all preventive maintenance recommended by the manufacturer and required by good industry practice. MES shall analyze oil samples of equipment consistent with manufacturer's recommendations and shall maintain and repair the tarping systems on all roll-off trucks. MES

shall have the option of using the County's contractor, First Vehicle Services, for on-road vehicle maintenance and repairs. The cost of such repairs shall be paid by the County and shall be charged to the Budget. MES shall coordinate, with the County, the surplus of any equipment or vehicles determined to require replacement or to be retired. Replacement of vehicles shall be at the County's expense except where necessitated by the negligence of MES or its employees or MES' failure to maintain or repair the vehicle.

**Section C.8 Washing and Cleaning.** MES shall wash and clean all equipment and vehicles associated with the Facilities regularly or as needed to control vectors and odors.

**Section C.9 Site Security.** MES shall maintain site security including, but not limited to:

a. Maintenance and repairs to gates or fencing at the Facilities necessary to maintain structural integrity.

b. Lock all gates, access points and doors to the Facilities during nonoperating hours. MES shall be responsible for all costs associated with repairs resulting from vandalism due to negligent failure to lock the Facilities, which costs shall not constitute Project Costs.

c. Advise the County of any incidents involving breach of perimeter security or break-in to a non-public area of the Facilities within twenty-four (24) hours after occurrence.

**Section C.10 Conduct.** MES staff shall, at all times, display professional conduct including proper attire and language use.

**Section C.11 Facility Maintenance and Repair.** MES shall perform all maintenance and repair work necessary to support the proper and efficient operation of the Facilities, including, but not limited to, the following:

a. Maintain the buildings included with the Facilities, including structural repairs and other activities as required to preserve their condition as of the Commencement Date, normal

wear and tear notwithstanding. Major work to buildings, as agreed by the Parties, shall be at the County's expense

b. Maintain Stationary Equipment. At a minimum, perform the tasks listed in the equipment manufacturer's recommended preventative maintenance schedule.

c. Maintain truck and trailer staging areas and recycling areas in a clean and litter free condition.

d. Regularly collect litter from the Scarboro Landfill, the HWDC, the HODO and the public roads surrounding the HWDC.

e. Maintain all process-related equipment within the Facilities including, without limitation, the compactors, truck scales, electrical system, heating, ventilation and air conditioning (HVAC), etc. Perform routine maintenance and repairs as necessary, all in accordance with the manufacturer's recommendations and requirements. Only new parts and lubricants meeting the manufacturer's specifications shall be used.

f. Maintain all structural components, architectural features and finishes in accordance with the Agreement, manufacturer's recommendations and good industry practices.

g. Keep computerized logs of all maintenance and repair procedures undertaken and provide copies of these logs to the County Representative on a monthly basis.

h. Repair any damage to the Facility equipment, surfaces or finishes during MES' operation and maintenance of the Facilities, except for capital expenses which have been approved as a capital project by the County.

i. Check all truck scales for accuracy no less than once per year.

j. Maintain leachate collection system including monitoring of leachate storage tanks and hauling of leachate to the Sod Run Wastewater Treatment Plant as necessary. Store manifests and maintain database of quantity of leachate hauled.

k. Maintain groundwater systems at Scarboro Landfill and Tollgate landfill in good working order.

l. Maintain flares at Legacy Sites.

m. Maintain equipment wash rack and power washing system at the HODO and pump the holding tank out weekly, at a minimum.

n. Perform monthly inspection of all petroleum product storage tanks.

**Section C.12 Repair or Replacement of Vehicles and Equipment.** In the event that any vehicle, equipment or facilities at the Facilities subject to use by MES is damaged, MES shall immediately schedule the necessary repair. If at any time a vehicle or equipment reaches a condition as a result of reasonable wear and tear from normal use and not lack of proper maintenance or misuse such that it is not feasible to continue its operation without replacement, MES shall so notify the County of the proposed plan of correction within one week. Written County approval and funding are required prior to the acquisition of any motor vehicle or the acquisition of any major new equipment. The County shall reserve the right to purchase any replacement vehicle or equipment at its discretion. MES shall maintain an on-site inventory of consumable supplies and replacement parts necessary to continue or promptly restore operations of equipment in the event of mechanical failure. Any equipment, parts, materials or facilities which are no longer needed as a result of replacement shall be promptly disposed of by MES with the salvage value being credited to the County.

**Section C.13 Vector Control.** MES shall take all necessary measures to control disease vectors (such as insects, rodents and birds). These measures shall include, but not be limited to, a regular vermin control program directed by a qualified applicator of pesticides licensed by the State of Maryland, appropriate housekeeping, litter control and odor control. Housekeeping and litter control shall include the cleanup of litter and debris at the Premises on a daily basis or more frequently as required. In addition, MES shall use traps and/or pesticides on an as needed basis in accordance with Applicable Laws.

**Section C.14 Odor, Noise and Dust Control.** MES' operational responsibilities include, without limitation, the following:

a. Operate the Facilities in such a way that odors, debris, dust and noise associated with the operations of the Facilities are minimized offsite in any area of human occupancy and in accordance with Applicable Laws and Prudent Solid Waste Management Practices.

b. Operate misters for odor control when necessary.

c. Place portable litter fencing and re-adjust the fencing as wind direction changes during the day.

d. Water haul roads as necessary for dust control and maintain daily data base for submittal of annual air permit.

e. Investigate any odor, debris, dust and/or noise complaints reported to MES or the County Representative and remedy such odor, debris, dust and/or noise condition if possible.

**Section C.15 Groundskeeping and Cleaning Services.**

a. MES shall inspect daily for leachate breaks, gully erosion and adequate cover material and shall correct any deficiencies.

b. The groundskeeping services for the Facilities shall include, but not be limited to:

- (1) Daily collection of litter and blown trash emanating from the Facilities.
  - (2) Maintaining all access roads, truck staging areas and the HODO in a reasonably clean condition.
  - (3) Sweeping paved roads, including Scarboro Road, as necessary to control mud and dirt tracked from the Facilities.
  - (4) Maintaining site drainage.
  - (5) Taking reasonable measures necessary to stabilize truck driving conditions at the working face during/after rain events.
  - (6) Mowing grassed areas as needed during the lawn maintenance season to maintain a height not to exceed six (6) inches, including at the Legacy Sites and the vacant properties owned by the County near the HWDC.
  - (7) Maintaining and painting the striping on roads annually or as frequently as necessary for safety.
  - (8) Maintaining pavements, including all on-site road and parking areas, in good condition and free of potholes.
  - (9) Maintaining adequate site lighting, utilities and drainage.
  - (10) Snow clearing and removal, and deicing of pavements and walkways.
  - (11) Maintaining on-site signage provided by the County.
  - (12) Periodically cleaning out sediment traps.
  - (13) Maintaining vegetation around HWDC site perimeter fence.
- c. MES shall provide cleaning services for all on-site facilities.
- d. MES shall check County-owned vacant houses at or near the HWDC for vandalism and for condition issues.

**Section C.16 Qualifications of Personnel.** MES shall staff the Facilities with personnel qualified and experienced in the operation, maintenance and management of Facilities similar in nature and character to those described herein. All MES workers shall be competent and skilled in the work they are assigned. MES shall be responsible for their acts, personal conduct and work performed in the course of carrying out their job duties. All work by employees shall be performed in a skillful and workmanlike manner. Due to interactions with the public, all employees shall dress appropriately and shall not use derogatory, profane or otherwise offensive language. MES' employees shall conduct themselves in a professional manner at all times. A fully trained and qualified manager, foreman or supervisor who is designated and authorized by MES to direct and implement all operational decisions and who shall also serve as the designated emergency coordinator shall be present at the Facilities during all operating hours. MES shall develop and initiate a drug testing program for all safety-sensitive employees working at the Facilities. Statistical results of the screening program will be provided to the County in the Monthly Report when requested. The County shall have the right to reject the Senior Operations Manager, the Deputy Chief of Operations, the Chief Project Manager or any Supervisor who does not, in the reasonable judgment of the Director, have adequate experience or qualifications to adequately perform his or her job duties and MES shall replace that employee promptly. Staffing may not be reduced or increased without the prior written approval of the County's Representative.

**Section C.17 Operating Schedule.** MES shall operate the Facilities in accordance with the schedule in Section 2.3.

Additional hours of operation must be approved in writing by the County Representative and in accordance with Applicable Law.

**Section C.18 Holidays.** MES shall not accept Waste at the Facilities on the following holidays:

New Years' Day

Martin Luther King Day

Presidents' Day

Memorial Day

Fourth of July

Labor Day

Veterans' Day

Thanksgiving Day

Day after Thanksgiving

Christmas Day

**Section C.19 Record Keeping.**

a. MES shall maintain at the Facilities, at a minimum, the following records:

(1) A copy of all weight slips from the Facilities.

(2) Daily logs for all processed vehicles transporting materials off-site showing truck registration number, and weight.

(3) Logs of all maintenance and repair procedures undertaken at the Facilities.

(4) Incident Investigation Report.

(5) Maintenance reports for equipment.

(6) As-built record drawings for the Facility and improvements, and equipment operating and maintenance manuals.

b. Monthly Operations Report. MES shall provide a Monthly Operations Report to the County Representative no later than fifteen (15) days after the end of each calendar month.

The Monthly Operations Report shall be prepared in a format subject to approval by the County and shall be signed by a duly authorized representative of MES. The Monthly Operations Report must be submitted to the County Representative and shall include, at a minimum, the following information:

(1) Compilation of daily records of Waste and Recyclables received at the Facilities.

(2) Summary of any incidents, including date and time of occurrence.

(3) Description of any instance when Hazardous Waste was received at the Facilities and the disposition of such waste.

(4) Description of maintenance procedures, repairs performed and problems encountered at the Facilities.

(5) Description of downtime for major operating equipment at the Facilities. This description should include duration, reason for and corrective maintenance performed in response to the downtime.

(6) Copies of any MDE site inspection reports and correspondence between MES and MDE regarding the Facilities.

(7) Documentation of any complaints received and the resolution of those complaints.

(8) Results of any tests conducted.

c. Operation and Maintenance Report. MES shall furnish to the County within ninety (90) days after the end of the Term, a statement with a summary of the information and statistical data provided in the Monthly Operations Reports, as well as all other data required to be furnished to the County under this Agreement. This report shall include detailed information

regarding the completed year's operation and maintenance of the Facilities and current conditions of the Facilities. The Annual Operation and Maintenance Report shall be prepared in a format subject to approval by the County

d. Incident Report. MES shall provide immediate notification of any incident having an environmental impact or involving an accident, summons, complaint, material breach of Applicable Law or Permit or criminal activity. MES shall verbally notify the County Representative immediately of any such incident and confirm in writing within twenty-four (24) hours. The incident report shall describe details regarding the nature of the incident, date and time of occurrence and corrective actions taken or to be taken.

e. Historic Records. The County shall provide MES access to the historic record pertaining to the Facilities and Legacy Sites.

## **SCHEDULE D**

### **OBLIGATION TO INDEMNIFY, DEFEND, REIMBURSE AND HOLD HARMLESS**

**Section D.1 Definitions.** As used in this Schedule D and Section 15.16, the following terms shall have the meanings set forth below:

“Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and disbursements and consultants’ fees, any of which are incurred at any time as a result of the existence as of the Commencement Date of Hazardous Material upon, about, beneath the Legacy Sites or Facilities, or migrating or threatening to migrate to or from the Legacy Sites or the Facilities, or the existence of a violation of Applicable Law pertaining to the Legacy Sites or the Facilities, and including without limitation:

(1) Damages for personal injury, or injury to property or natural resources occurring upon or off of the Legacy Sites or the Facilities including, without limitation, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(2) Reasonable fees incurred for the services of attorneys, consultants, contractors, experts, and laboratories, and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Applicable Law including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, or monitoring work required by any federal, state, or local government agency; and

(3) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (2) herein; and

(4) Fines, penalties, fees, charges or other costs imposed by any Governmental Authority and arising from a violation of Applicable Law by the County or any County contractor performing services at any of the Facilities or Legacy Sites, including, without limitation, the failure to obtain or maintain any Governmental Approvals.

“Hazardous Material” means any substance:

(1) The presence of which requires investigation or remediation under Applicable Law; or

(2) Which is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under Applicable Law; or

(3) Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is (or becomes) regulated by any Governmental Authority; or

(4) The presence of which on the Legacy Sites or the Facilities causes or threatens to cause a nuisance upon the Legacy Sites, the Facilities or to nearby properties, or poses or threatens to pose a hazard to the health or safety of persons on or about the Legacy Sites or the Facilities; or

(5) Which contains gasoline, diesel fuel, or other petroleum hydrocarbons.

## **Section D.2 Indemnification.**

a. To the extent permitted by law, the County, its successors, assigns and guarantors, agrees to indemnify, defend, reimburse and hold harmless MES and its officers, employees,

contractors and agents from and against any and all Environmental Damages arising from (i) the presence of Hazardous Material upon, about or beneath the Legacy Sites or the Facilities, or (ii) migrating to or from the Legacy Site or the Facilities, or (iii) arising in any manner whatsoever out of the violation of any Applicable Law pertaining to the Legacy Sites or the Facilities and the activities thereon (irrespective of the presence of Hazardous Materials), any of which exist as of the Commencement Date, or (iv) the breach of any warranty or covenant or the inaccuracy of any representation of the County contained in this Agreement.

b. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings, even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgment, penalties or other sums due against such indemnified persons. MES, at its sole expense, may employ additional counsel of its choice to associate with counsel representing the County.

c. The obligations of the County in this Schedule D shall survive the expiration or termination of this Agreement.

d. The obligations of the County under this Schedule D shall not be affected by any investigation by or on behalf of MES, or by any information that MES may have or obtain with respect thereto.

e. Indemnification shall not apply if any release of Hazardous Material is the result of any negligent act or omission of any MES employee or agent.